



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 13, 1977

ATTORNEY GENERAL OPINION NO. 77- 115

Mr. Edwin H. Bideau III
Neosho County Attorney
123 West Main
Chanute, Kansas 66720

Re: Counties--Funds--Expenditure

Synopsis: County general revenue sharing monies and general fund monies may be expended by the Neosho County board of county commissioners for the reconstruction, rebuilding or restoration of the Old Austin Bridge for pedestrian and other limited traffic, notwithstanding the bridge is closed to motor vehicle traffic. The board is under no statutory obligation to vacate county roads leading to the bridge merely because it is not used for vehicular traffic, so long as the road is deemed useful and convenient for public travel.

* * *

Dear Mr. Bideau:

You inquire concerning the legality of plans being considered by the Neosho County board of county commissioners for the renovation of a local bridge across the Neosho River which is known as the Old Austin bridge.

You advise that it is located several miles southeast of the City of Chanute, and has been closed to vehicle traffic since the county engineer inspected the bridge several years ago, and closed it as inadequate to support vehicular traffic. Barricades were placed on the bridge barring all traffic, and a new bridge was

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subsequently constructed approximately one mile downstream. Recently, the bridge has become the focus of attention of the local historical society, and an application is currently pending to place it on the National Register of Historical Places, which has been approved by the State Historical Society and forwarded on to federal authorities. The county engineer advises that it is safe for pedestrian, horse and motorcycle traffic, but not for the larger weights of motor vehicles. The historical society has petitioned the board of county commissioners to preserve the bridge as a historical landmark, and to convert it to these modes of traffic. Barriers would be installed to prohibit motor vehicle traffic. The board has agreed to do so, but has not yet expended any funds therefor. In addition, you indicate that a petition to create a county park in the area has also been presented, but has not yet been acted upon. You indicate that several townships have agreed to donate their share of revenue-sharing monies to rebuild the bridge at this time, and are also willing to contribute to the establishment of a park if one is created.

However, surrounding landowners have raised the question whether the county is legally authorized to expend county funds from either the general fund, the road and bridge fund, or from revenue-sharing sources for the rehabilitation or reconstruction of a bridge which will be limited to pedestrian and other restricted traffic. I see no objection or lack of authority whatever for the use of general fund monies for this project. Absent express statutory authority, the board of county commissioners may provide for the expenditure in the exercise of their general legislative and administrative powers under K.S.A. 19-101a et seq. Under 31 C.F.R. § 51.31, revenue-sharing monies may be applied to "ordinary and necessary maintenance and operating expenses" for eight categories or objects: public safety (including law enforcement, fire protection, and building code enforcement); environmental protection (including sewage disposal, sanitation and pollution abatement); public transportation including transit systems, streets and roads); health; recreation; libraries; social services for the poor and aged; and financial administration. In addition, revenue-sharing monies may be used for "ordinary and necessary capital expenditures authorized by law." The reconstruction of the bridge being a capital expenditure which lies within the legislative authority of the county, upon the adoption of an appropriate resolution, the use of revenue-sharing monies would appear to be permitted.

You also inquire whether the roadways approaching the bridge must be vacated solely because the bridge itself has been closed for more than two or three years. K.S.A. 68-102 provides in pertinent part that the board of county commissioners may vacate a road when, in their judgment,

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"said road is not a public utility by reason of neglect, nonuse, or inconvenience or from other cause or causes said road has become practically impassable and the necessity for said road as a public utility does not justify the expenditure of the necessary funds to repair said road or put the same in condition for public travel"

In addition, under K.S.A. 68-106, it appears that the board should consider generally the utility, convenience and inconvenience and expense which will result from any vacation of a public road. I see no statutory obligation on behalf of the board to vacate the road if, in their judgment, it provides useful and convenient access to the bridge as an object to public interest and concern, even if the bridge itself is not maintained for vehicular traffic, and, of course, so long as the road provides useful and convenient access to adjoining agricultural lands. In my opinion, the judgment to vacate all or any part of the road rests in the sound discretion of the board of county commissioners.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj